

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA)
)
)
v.) **CRIMINAL NO. 2:16cr36**
)
GERALD ANDREW DARBY,)
)
)
Defendant.)

MOTION TO SEAL EXHIBIT

The United States of America by its counsel, Dana J. Boente, United States Attorney for the Eastern District of Virginia, and Elizabeth M. Yusi, Assistant United States Attorney, pursuant to Local Rule of Court 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, respectfully submits this Motion to Seal the attached Exhibit B (filed separately, under seal) to the government's Response to Defendant's Motion to Compel. The attached document is submitted under seal pursuant to Local Rule 49(E), which provides that the document is to be treated as sealed pending the outcome of this motion. A proposed Order is attached hereto. In support thereof, the government avers the following:

The attached Exhibit B contains the affidavit of a Supervisory Special Agent with the Federal Bureau of Investigation. It discusses law enforcement sensitive information related to the case at hand. Because of the sensitive nature of information, the government is moving for the affidavit to be filed under seal.

The Court has the inherent power to seal materials submitted to it. *See United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); *see also Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293

(D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). “The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests.” *In re Knight Pub. Co.*, 743 F.2d 231,235 (4th Cir. 1984). Further, courts can seal documents that contain sensitive information, such as law enforcement sensitive information. *Pittston Co. v. United States*, 368 F.3d 385, 406 (4th Cir. 2004) (affirming the sealing of confidential information that was produced pursuant to a protective order).

CONCLUSION

For all the above reasons, counsel respectfully moves for the entry of an Order in accordance with this Motion.

Respectfully submitted,

Dana J. Boente
United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Richard Colgan, Esq.
Rodolfo Cejas, Esq.

/s/ Elizabeth M. Yusi

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